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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. A-582

OWEN W. CRUMPACKER,

Petitioner,

vs.

SAUL I. RUMAN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner seeks a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW.

The opinion of the Court of Appeals is in the form of an unpublished order dated October 1, 1976 and is attached as App. A1 thru A5. The Order of the District Court appealed from and affirmed by the Court of Appeals is attached as App. A8 thru A10. Excerpts from the oral decision of the District Court rendered the day prior to the formal decision appear at appendix A11 thru A13. The oral findings and order of the District Court alleged to have been "blatantly, deliberately, and wilfully disobeyed" by petitioner are set out at appendix A17 thru A18.

JURISDICTION.

The Order of the Court of Appeals (App. p. A1) was entered on October 1, 1976. A timely petition for rehearing was denied on Nov. 1, 1976 (App. p. A6). The order of Justice Stevens extending the time for the filing of this petition to and including February 22, 1977 is set out at App. p. A7. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

After the close of the plaintiff's case on July 18, 1974, counsel for the parties advised the trial judge that an amicable settlement had been reached at a figure of $35,000 and the jury was discharged after a day and a half of evidence.

Joseph Mancuso, a gang boss in charge of a re-railing crew, sought compensation for the alleged loss of hearing in his left ear attributed to the explosion of a torpedo on the rail of a track in the yards where a derailment occurred the night before. The employer, the Indiana Harbor Belt Railroad Company, was sued under the Federal Employers Liability Act. Respondent Saul I. Ruman had negotiated the settlement with a claim agent, Joe Patno.

On the evening of July 17, petitioner, as counsel for the railroad, had requested a write-up of the testimony of plaintiff's witness, Vince Mendoza. On returning to his office from the courthouse on July 18, petitioner recalled a discussion with a lawyer's wife about the loss of a hearing aid following a car accident in Dixmoor, Illinois (The plaintiff, Joseph Mancuso, had been Mayor there for 17 years). Dr. Mason, who examined Mancuso shortly before the trial but had not completed his report, was contacted and stated: "This man had air cells in his mastoid that indicated that he had ear trouble long before the incident in question".

These facts and similar circumstances prompted counsel for the railroad to make an extensive investigation into the background of the plaintiff's witnesses, all of whom lived in Dixmoor or adjacent suburbs, and all of whom were members of gang 16. No one other than the members of gang 16 had ever seen a torpedo in the railroad yard and the non-gang 16 employees present at the re-railing heard no explosion. A transcript of the testimony of all witnesses was ordered by defendant's counsel from the court reporter, Frank Butler. When the members of gang 16 became restive about their money, respondent's investigator, Ray Kujovich, commenced contacting the claim agent, Joe Patno, on the subject of the forthcoming $35,000 check. Counsel for Mancuso, on August 28, 1974, filed a Motion to compel consummation of the settlement (App. p. A14). The following day, accepting respondent's allegations as true, the trial judge ordered petitioner and Joe Patno to appear for a hearing on Sept. 12, 1974 "to determine the misconduct if any, of counsel and the appropriate penalties therefore" (App. A16). The trial judge called Patno as the court's witness and advised him of his right not to testify. Counsel were ordered to make statements in lieu of sworn testimony. At the conclusion of that hearing the trial judge announced that he believed "no such investigation was underway, and that it is a sham put upon this Court by Defense Counsel, Owen W. Crumpacker to warrant the delay of this settlement." The trial judge stated further: "If there are any matters of criminal investigation involved in this regard to either side, take that to the proper law enforcement officers, be it FBI or the United States Attorney" (App. p. A17). Thereupon the trial judge fined the railroad $1,000 per day if it didn't deliver the check in 7 days and ordered "Mr. Crumpacker to pay Mr. Ruman the sum of $120 for three hours time needlessly consumed in pursuing a settlement, etc." (App. A17).

The railroad paid the $35,000 to Mr. Ruman within 7 days, who then filed a satisfaction of judgment. After a series of

further proceedings, counsel for the railroad was found guilty of contempt for wilful disobedience of the September 12, 1974 order, fined an additional $120 and suspended from practice in the United States District Court for the Northern District of Indiana pending the payment of $240 to Mr. Ruman.

QUESTIONS PRESENTED.

Whether the due process clause of the Fifth Amendment and the federal contempt statute deprive a federal court of jurisdiction to levy a separate fine upon both a party litigant and its counsel for alleged delays in consummating an agreed settlement of pending litigation.

Whether a federal court has jurisdiction under its contempt powers, either statutory or inherent, to foreclose and prevent an investigation and report by a party litigant of a palpable fraud on the court.

Whether a federal court retains jurisdiction to punish an attorney for a party litigant for contempt for allegedly interfering with the settlement of a pending lawsuit after his client has consummated the settlement.

Whether a federal trial judge is under a mandatory duty to disqualify himself from hearing and deciding charges of contempt against an attorney when the trial judge, four months earlier, has conducted a hearing, called witnesses, and entered a finding of misconduct against the same attorney.

Whether a federal judge has jurisdiction, in view of the limitations placed upon him under the Eighth Amendment and the federal contempt statute and rules of criminal procedure, to suspend or disbar the attorney from practicing in the federal court for failure to pay a $240.00 fine levied against him and payable to the attorney for his client's adversary.

STATUTORY PROVISIONS INVOLVED.

Amendments V and VIII of the Constitution are involved. (App. A23) Title 18 U. S. C. Chapter 21—Contempts §§ 401 and 402 are set forth in App. A24 and A25. Federal Rules of Criminal Procedure (Title 18) Rule 42. Criminal contempt appears at App. A26. Pertinent Rules of the Supreme Court of Indiana, Code of Professional Responsibility, Admission and Discipline Rule 23 appear at App. A23.

STATEMENT OF THE CASE.

Petitioner, a trial lawyer for 35 years, had never been guilty of crime, misdemeanor or otherwise, and had never been charged with contempt, civil or criminal, prior to Judge Eschbach's order of August 29, 1974 reading in pertinent part as follows:

> "This matter is of such serious proportions that this Court deems a prompt hearing to be essential, not only to require completion of the settlement but to determine the nature of the misconduct, if any, of counsel and appropriate penalties therefore." (App. p. A16.)

Taking into consideration Mr. Ruman's Motion to Compel Completion of Settlement filed the previous day (App. A14) counsel for the railroad had no reason to believe that Judge Eschbach's order was not an order to show cause under Title 18, Federal Rules of Criminal Procedure, Rule 42(b) Criminal Contempt. (App. p. A26) See Title 18 U. S. C. Chapter 21—Contempts **§ 401 Power of Court.** (App. p. A24)

Both counsel for the railroad and the claim agent appeared "at the time and place of the hearing" in compliance with the order to show cause and Rule 42 of the Federal Rules of Criminal Procedure. The trial judge called the claim agent, Joe Patno, as a witness after advising him of his rights against

self-incrimination. Patno testified under oath as the Court's witness that defense counsel had called him three or four times to hold up the settlement because he thought there might be some fraud in the case which he was investigating. Petitioner advised the court that he had discussed the problem with Mr. Patno's superiors, E. L. Hunt and Robert Herkes. He advised them that the Federal Judge, basically, had the responsibility of determining whether the matter should be looked into.

Mr. Crumpacker, by way of defense, attempted to refresh the Court's recollection with reference to the testimony of Vince Mendoza. (Tr. 70) Mr. Mendoza's testimony to the effect that *he had been in Mr. Ruman's office in September of 1971* was the first time that the defendant knew of his participation. The settlement was made in good faith. On the evening of July 17, Crumpacker asked Frank Butler, the court reporter, to furnish him, immediately, with the Court's remarks plus the testimony of Mendoza and the cross-examination that evening. (Tr. 71) The Court advised Crumpacker that the reporter was too tired that night to look into it. (Tr. 71) Mr. Ruman interrupted:

> "I submit he should be limited to discussing the settlement and not be permitted to go into, what is his usual way, to put in all types of slanderous remarks, inferences, and unsubstantiated statements not under oath by him." (Tr. 72)

After the lawyers left the courthouse on July 18, Crumpacker recalled that a lawyer had been in an accident in Dixmoor and had lost a hearing aid and that his car was taken to a car repair shop operated by the plaintiff Mancuso in the case, or in which he had an interest. (Tr. 73) The lawyer's wife went over to Dixmoor and found a man in the coffee shop, being the shop described by the fire chief and police chief, who had testified as witnesses, *next to the I. H. B. tracks*. One of the men present in the coffee shop was a man wearing a hearing aid.

(Tr. 73) Crumpacker then called Dr. Mason, one of the defendant's intended witnesses, who had taken x-rays and stated: "This man had air cells in his mastoid that indicated that he had this ear trouble long before the incident in question." (Tr. 74) Crumpacker reviewed Dr. Kuhn's testimony to the effect that he made a mistake in the letter to Mr. Ruman in reporting that it was the left ear instead of the right ear that was the one where he had suffered the most damage. (Mancuso's witnesses testified that he was holding his left ear) Crumpacker learned that Dixmoor (Joe Mancuso having been mayor for 17 years) was the subject of a number of investigations by the state police. Either the fire chief or the police chief had testified that Mancuso had a hearing aid in September, October, November, 1970, although Dr. Kuhn's fitting did not occur until February of 1971. The employment records of Gang 16 indicated that "they were all in one way or another connected with Dixmoor and Dixmoor politics," that they were all in debt and "had numerous wage assignments." (Tr. 75) These circumstances led Crumpacker to believe that a fraud had been perpetrated on the Court and that perjured testimony had been offered, particularly with reference to the fact that Vince Mendoza, the foreman, who said he had been under the car bolstering it up when, in fact, as the evidence disclosed, *they had nothing to do with bolstering the car.* (Tr. 75) Crumpacker undertook to get the personnel records of the witnesses. He studied them and went over them while waiting for Mr. Butler's transcript, and waiting for the return of the police lieutenant who had investigated the various aspects of Mancuso's testimony prior to the time of the incident in question. (Tr. 75) Crumpacker's great concern was not the $35,000, but with reference to the question of a perpetration of fraud and a violation of the criminal laws under Title 18. (Tr. 76) Crumpacker learned that Mancuso was making demands that were very unusual because certain of his witnesses, Comforti, Winbush, Mendoza, and others *had not received their money*. (Tr. 76) For that reason

Crumpacker was anxious to get as many of the facts together *before* he made any report to the Court. Crumpacker talked to railroad representatives on the subject. Crumpacker found that the plaintiff's witnesses, Winbush, Stitts, Comforti, and others had made numerous claims for alleged injuries against the railroad over the past 5 or 10 years. (Tr. 77) Mr. Ruman represented a man named Goddard who received a verdict in the fall of 1972. (Tr. 77) Goddard was the engineer involved in the train *which was derailed on the evening of September 19, 1970,* the night before the alleged explosion involving Mancuso's ear. Crumpacker was attempting to complete his investigation and get further information before reporting to the Court. (Tr. 78) There were two (2) reasons for not reporting to the Court earlier: (1) waiting for a police lieutenant in Homewood to return from vacation, and (2) waiting for Mr. Butler's transcript of the testimony of Mendoza and the plaintiff's witnesses. Crumpacker urged Mr. Mathias of personnel to furnish employment records of Winbush and Comforti. On receiving the record of persistent wage assignments, Crumpacker knew Comforti was lying about "dropping a torpedo off of some kind of a place in Calumet City." (Tr. 79) In answer to the Court's inquiry on a report, Crumpacker stated as follows:

> "Now, as far as I am concerned the only thing I can suggest is that within the close of the week I will report all of these things in writing. I have a lot of them assembled. I hope that Mr. Butler can get the complete transcript which I ordered at the time of the trial so that I can study it with these reports, and I will then make and file in open court a full report on everything that I have undertaken and ascertained, and then if Your Honor determines on the basis of the report that the check should be turned over to the Plaintiff, I am sure that there will be absolutely no problem, but it is my understanding that my primary responsibility is to the Court. I mean regardless of the $35,000, which I think is somewhat incidental, but I think that there are and have to be circumstances that require a full and complete investigation into the circumstances under which Mancuso

> was referred to Ruman in September by an attorney with whom I have not had a chance to talk with. His name slips me, but he is an attorney in Blue Island who has been the attorney that was representing these syndicate people in the bond racket convictions, in various and sundry items of violence, and I say that those are the matters that are of concern to me, and that is the only reason that this matter hasn't been concluded within, I would assume, the normal two or three weeks that the claim department takes to write a check." (Tr. 79-80)

The District Court's finding and order of September 12, 1974 (App. p. A17) were rendered in the presence of the news media, as well as defense counsel's client, Joe Patno.

Claim agent Joe Patno delivered the $35,000 voucher, payable to Joseph Mancuso and Saul I. Ruman, his attorney, to Mr. Ruman's office within the seven (7) day period fixed by Judge Eschbach to avoid the payment of a fine in the amount of $1,000 per day as adjudged. Saul I. Ruman, on October 10, 1974, filed a "Satisfaction of Judgment Against Debtor" although no judgment had been rendered.

On October 17, 1974, Ruman filed a written report with reference to the failure of defense counsel (your petitioner) to pay the $120.00.

Mr. Ruman's report alleged that Owen W. Crumpacker's failure to pay the $120.00 as ordered by the court was "intentional with malice," that he should be ordered to pay the $120.00 or show cause why he should not be held in contempt of court, that the court enforce sanctions including removing him from practice, and that a sum of punitive damages be assessed against Owen W. Crumpacker in a reasonable sum not to exceed ten thousand dollars ($10,000.00), etc.

On October 25, 1974, Judge Eschbach entered the requested rule to show cause in the following language:

> "Thereafter, Owen Crumpacker is ordered and directed to show cause, if any he has, as to why sanctions should not be

imposed upon him for his alleged failure to comply with the prior orders and sanctions of this court. Such showing shall be made in writing and shall be filed in the office of the clerk in or before November 19, 1974.

"Entered this 25th day of October, 1974."

In full compliance with the order of October 25, 1974, defense counsel, on November 19, 1974, served and filed a written response to the Order to Show Cause stating in pertinent part as follows:

"Respondent states that, as an officer of the Court, in the performance of his professional obligations to the Court, he was obliged to call the Court's attention to the palpable fraud perpetrated upon the Court through the procurement of perjured testimony, all as shown of record in the proceedings held and had before the Hon. Jesse E. Eschbach on July 17 and 18, 1974."

* * * * *

"Insofar as the Order of September 12, 1974, the Order of October 25, 1974 and the 'REPORT TO COURT ON COURT'S ORDER PERTAINING TO PAYMENT OF ATTORNEY FEES' constitute a charge by either Saul I. Ruman or Hon. Jesse E. Eschbach that Respondent Owen W. Crumpacker be punished for Contempt of Court, said Respondent Owen W. Crumpacker denies all of the allegations and charges insofar as they purport to accuse Respondent Owen W. Crumpacker of bad faith."

Defense counsel procured a transcript of the hearing of September 12, 1974 and filed it in support of his written return in two paragraphs.

Instead of permitting a hearing on the Rule to Show Cause and defense counsel's response thereto, the court, on November 26, 1974, entered a five-page order consisting of an inaccurate and prejudicial recitation of the facts. (App., pp. A19 thru A22) A third "Rule to Show Cause" was entered under the Federal Rules of Criminal Procedure, Title 18, Rule 42(b):

"Accordingly, this court will conduct a hearing at 12 noon in the United States District Court Room on the second

floor of the Federal Building in Hammond, Indiana, on January 16, 1975, as to why Owen Crumpacker, defense counsel herein, should not be suspended from the practice of law in the United States District Court for the Northern District of Indiana until such time as the $120 sanction previously assessed against counsel is paid."

Defense counsel appeared before the court on the afternoon of January 16, 1975 in response to the rule to show cause, and, by way of oral statement in lieu of sworn testimony, responded in part as follows:

"I am relying on the high privilege of a lawyer and a member of the Bar to exercise his prerogatives according to the dictates of his own conscience, to advise his client as to what procedures they should take in a case, particularly a civil case, and that in my opinion it is beyond the power of the Court to, as happened on the 12th of September, disregard the high privilege of an attorney, accuse him of bad faith, humiliate him in the presence of his clients by taking the client and putting him on the stand in front of him, and then in the client's presence determine that the lawyer and the advice that he was giving him was a sham."

Defense counsel advised the court that in his opinion, the charges against him were false and that, at all times, he had proceeded in accordance with the duties enjoined upon him as an attorney, and as defined by the Code of Professional Responsibility. Defense counsel, again, reviewed in detail what he believed to be clear, convincing, detailed proof of the perpetration of a fraud on the court by Mancuso and his witnesses.

At the conclusion of the January 16, 1975 hearing, again in the presence of the news media and without evidence, the court concluded as follows:

"Gentlemen, as I have said, I have been a Federal Judge for almost 13 years. In 13 years I not only have never found a lawyer in contempt of court, I have never even threatened to find a lawyer in contempt of Court, and I had hoped I never would. Unfortunately this blatant, de-

liberate, wilfull challenge to what I believe to be a valid order to pay $120 in attorney fees cannot go unnoticed. I would much prefer to spend this time in ruling on motions, on trying cases than to be in here on this kind of a matter, but how can I continue to discharge my oath and my responsibilities if I turn my back on a known wilfull disobedience to a court order, called to the attention of the Court by Counsel on the other side after at least two complete full blown hearings having been held, and every opportunity that I could dream of has been presented to each side to present anything he wishes before me. I don't know what I sincerely could do."

The trial judge ignored his ruling of September 12, 1974, *supra,* refusing to permit defense counsel to have to the end of the week to file a report in writing and his earlier determination that "if there are any matters of a criminal investigation involved * * * take that to the proper law enforcement officers, etc." stating:

"It is more than six months, I believe, since the trial. Mr. Crumpacker has made and brought assertions and I listened to them in open Court concerning perjury and fraud in the evidence presented at trial by the Plaintiff, yet to this date other than the broad assertions nothing has ever been presented of a substantive evidentiary nature to support those allegations. It was not my disinterest in fraud that I proceeded to determine that your representations were a sham, it was because there was nothing to back them up, nothing that I could find that was presented to me to support them."

(On September 12, 1974, the trial judge deliberately and unequivocally ruled that he was not interested in evidence of perjury and fraud or a written transcript and report demonstrating the same.)

Lest there be any doubt that both the plaintiff's counsel, respondent Saul I. Ruman, and the trial judge, were intending to convict defense counsel of the crime of indirect criminal contempt as defined by Congress in 18 U. S. C. § 401(3), "disobedience or resistance to its lawful writ, process, order, rule, decree, or command," we refer to the following comments:

"Quite frankly, Gentlemen, I almost prayed that Mr. Crumpacker would pay the $120 but he chose not to do so and to continue his wilfull defiance of the order of this Court.

"Now I don't want further argument, Gentlemen, I gave you both unlimited opportunity. I want to ask you, Mr. Crumpacker, and all I want is an answer of 'yes' or 'no,' sir, will you pay the $120?"

Petitioner refused to convict himself of the charges of misconduct which the trial judge, on August 29, 1974, declared to be "of such serious proportions that this court deems a prompt hearing to be essential," the trial judge attempted to convert the proceedings from criminal contempt to civil contempt thereby justifying his continued presence in the case for the purpose of entering an order requiring the clerk's office to strike counsel's appearance in all cases pending in the United States District Court for the Northern District of Indiana.

REASONS FOR GRANTING THE WRIT.

This case involves an important question of constitutional limitations and restrictions placed by Congress upon the exercise of contempt powers of federal courts. No question with reference to the broad jurisdiction of federal courts to impose sanctions upon attorneys and parties litigant under the Federal Rules of Civil Procedure is involved. *Link* v. *Wabash Railroad Co.*, 370 U. S. 626 (1962). *National Hockey League* v. *Metropolitan Hockey Club*, ... U. S. ....., 49 L. Ed. 2d 747 (1976). *Society Internationale* v. *Rogers* (1958), 78 S. Ct. 1087. *Bon Air Hotel, Inc.* v. *Time, Inc.*, C. A. 5 (1969) 376 F. 2d 118. Nor does this case question or involve the broad, inherent powers of federal courts over attorneys. It is conceded that, as officers of the court, attorneys are amenable to judicial regulations by federal courts. *Phipps* v. *Wilson*, 186 F. 2d

748 (7th Cir. 1951). *U. S.* v. *Stump*, 112 F. Supp. 237 (D. Ala. 1953). *Jeffries* v. *Laurie*, 27 Fed. 198 (E. D. Mo. 1886). *Toledo Metal Wheel Co.* v. *Foyer Bros.*, 223 Fed. 350 (6th Cir. 1915).

However, by its very nature, the exercise of contempt powers by federal courts is subject to grave abuses. *Cooke* v. *U. S.* (1925), 267 U. S. 517; 45 S. Ct. 390; 69 L. Ed. 767. *Anderson* v. *Dunn*, 6 Wheat 204. *In Re Michael*, 326 U. S. 224, 66 S. Ct. 78, 79, 90 L. Ed. 30. *Mayberry* v. *Pennsylvania*, 1971, 400 U. S. 455, 9- S. Ct. 499, 27 L. Ed. 2d 532. *In Re Dellinger*, 7th Cir. 1972, 461 F. 2d 389. *Offutt* v. *U. S.*, 348 U. S. 11, 75 S. Ct. 11, 99 L. Ed. 11. *U. S.* v. *Meyer*, 1972, 149 U. S. App. D. C. 212, 462 F. 2d 827. As stated by the court in the case of *In Re McConnell*, 370 U. S. 230, 234, 82 S. Ct. 122, 1291 (1962):

> "(3-5) The statute under which petitioner was summarily convicted of contempt is 18 U.S.C. § 401, which provides that:
>
> 'A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> '(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice * * *.'
>
> "This section is based on an Act passed in 1831 in order to correct serious abuses of the summary contempt power that had grown up and was intended as a 'drastic delimitation * * * of the broad undefined power of the inferior federal courts under the Act of 1789,' revealing 'a Congressional intent to safeguard constitutional procedures by limiting courts, as Congress is limited in contempt cases, to 'the best possible power adequate to the end proposed.' "

The Court will observe that the McConnell case was decided by the same Court that decided *Link* v. *Wabash Railroad Co.*, *supra.*

There is no statute or rule authorizing a federal court to punish, by fine or sanction, a litigant and/or its attorney for

failing to consummate a settlement agreement with reference to a pending case. Furthermore, petitioner was under a high, legal and moral duty to investigate into and report the perpetration of a fraud on the court. In convicting the railroad and its counsel of "serious misbehavior," on September 12, 1974, the court summarily declined to look into the detailed specifications of fraud and perjury and refused to permit the railroad's counsel to file a written report. In so doing, the court exceeded its jurisdiction. The finding and sentence of September 12, 1974 are and were void. *Windsor* v. *McVeigh* (1876), 93 U. S. 274, 23 L. Ed. 914. *Ex Parte Lange* (1874), 18 Wall. 163, 21 L. Ed. 872. *Gamble* v. *Pope and Talbot, Inc.*, C. C. A. 3, 1962, 307 F. 2d 729.

The Legal Effect of the Filing of the Satisfaction of Judgment.

To avoid paying the fine of $1,000 per day under the conviction and sentence of September 12, 1974, the railroad's voucher in the amount of $35,000 payable to Joseph Mancuso and Saul I. Ruman was delivered by Claim Agent Patno to Mr. Ruman's office on September 19, 1974. On October 10, 1974, respondent Saul I. Ruman signed and filed a "Satisfaction of judgment against debtor" reciting the receipt of $35,000 in full payment of the settlement. The satisfaction states that the $120 fine levied against Owen W. Crumpacker had not been paid. (Although no judgment had in fact been entered, the filing of the acknowledgement of the receipt of the proceeds of the settlement disposed of the lawsuit between the plaintiff, Joseph Mancuso, and the defendant, Indiana Harbor Belt Railroad Company.)

Seven days later, and on October 17, 1974, with the main action fully and finally disposed of, respondent Saul I. Ruman went after the railroad's counsel for the $120 fine. Alleging that the failure to pay the fine was "intentional with malice" respondent Ruman sought to have counsel for the railroad held in contempt, removed from practice in the United States District Court, and fined an additional sum not to exceed $10,000.

In the rule to show cause issued by the District Court pursuant to Rule 42(b), of the Federal Rules of Criminal Procedure (Title 18), (App. A26), Judge Eschbach recited the facts and charges outlined by respondent Saul I. Ruman. The show cause order commanded Owen W. Crumpacker to make his showing in writing, filed in the office of the clerk, on or before November 19, 1974.

As hereinafter pointed out, a void order cannot be enforced through contempt proceedings either criminal or civil. After creating irreparable damage to the railroad's counsel's name and reputation, Judge Eschbach, on January 16, 1975 sought to maintain jurisdiction to strike counsel's name from the docket sheets in all pending cases through his inherent jurisdiction to enforce orders in civil actions. (Judgment January 17, 1975, App. A8)

In so doing, both the District Court and the Court of Appeals ignored the landmark decision of this Court in *Gompers* v. *Bucks Stove and Range Co.* (1911), 221 U. S. 418; 31 S. Ct. 492. Civil contempt proceedings were held to be ancillary to the main case. When the main case was settled, the ancillary proceedings also died. In reversing the decision of the Court of Appeals, this Court stated:

> "But, as we have shown, this was a proceeding in equity for civil contempt, where the only remedial relief possible was a fine, payable to the complainant. The company prayed 'for such relief as the nature of its case may require,' and when the main cause was terminated by a settlement of all differences between the parties, the complainant did not require, and was not entitled to, any compensation or relief of any other character. The present proceeding necessarily ended with the settlement of the main cause of which it is a part. Bessette v. W. B. Conkey Co. 194 U. S. 328, 333, 48 L. ed. 1002, 1004, 24 Sup. Ct. Rep. 665; Worden v. Searls, 121 U.S. 27, 30 L. ed. 858, 7 Sup. Ct. Rep. 814; State v. Nathans, 49 S. C. 207, 27 S. E. 52. The criminal sentences imposed in the civil case, therefore, should be set aside."

Furthermore, respondent Saul I. Ruman was not qualified to represent the United States in a criminal contempt proceedings notwithstanding his representations to the contrary. The Court of Appeals for the Seventh Circuit so held in the case of *Kienle* v. *Jewel Tea Co.* (7th Cir., 1955), 222 F. 2d 98.

A Void Order Cannot Be Enforced by Contempt Proceedings, Either Criminal or Civil.

It will be observed that the District Court, in its order of November 29, 1974, asserted that petitioner was barred from questioning the validity of the September 12, 1974 order by failing to appeal:

> "Had counsel or his clients wished to appeal the order of September 12, 1974 directing the completion of the settlement previously represented to this court or the imposition of the $120 sanction, counsel had his rights of appeal but elected not to pursue them."

By failing to appeal from that portion of the order requiring him to pay $120 to opposing counsel, the lawyer for the railroad had become a helpless victim of Saul I. Ruman's avowed project to silence him through disbarment or suspension. The Court of Appeals, in affirming the District Court's order and opinion, stated:

> "The order appealed from held Appellant Crumpacker, hereinafter Appellant, in civil contempt of court for his willful and deliberate failure and refusal to comply with the order of the District Court made in this action in the court below on September 12, 1974." (App., p. A2.)

The record discloses that both the Court of Appeals and the District Court are in error in their failure to observe the distinction between civil contempt proceedings and criminal contempt proceedings. It is difficult to believe that both courts are unfamiliar with this court's classic definitions in *Gompers* v. *Buck's Stove and Range Co., supra.*

The Court of Appeals avoided passing upon critical issues raised by petitioner on the theory that he should have appealed from all of the orders other than the one that suspended him from the right to practice law:

> "It is true that in Appellant's opening brief he raised many alleged issues on appeal. However, no appeal was taken from any order other than the one of January 17, 1975, so he cannot attack the earlier orders referred to in his alleged issues on appeal." (App., p. A3.)

The Court of Appeals, again, is in error. It has been universally held that, if an order or judgment is void for want of jurisdiction (as pointed out with reference to the September 12, 1974 decision), all efforts to enforce the order through contempt proceedings, either civil or criminal, are likewise void. *United States ex rel. Thomas* v. *Keokuk* (1868), 6 Wall. 518, 18 L. ed. 918; *Ex parte Rowland* (1882), 104 U. S. 604, 26 L. ed. 861; *Ex parte Fisk* (1884), 113 U. S. 713, 28 L. ed. 1117, 5 S. Ct. 724; *Re Ayers* (1887), 123 U. S. 443, 31 L. Ed. 216, 8 S. Ct. 164; *Re Sawyer* (1888), 124 U. S. 200, 31 L. Ed. 402, 8 S. Ct. 482; *Ex parte Buskirk* (1896, C. A. 4th), 72 F. 14; *Ex parte Robinson* (1906, C. A. 9th) 144 F. 835; *Lewis* v. *Peck* (1907, C. A. 7th Ill.), 154 F. 273, *cert. den.* 207 U. S. 593, 52 L. Ed. 355, 28 S. Ct. 258; *Brougham* v. *Oceanic Stream Navigation Co.* (1913, C. A. 2d N. Y.), 205 F. 857; *Abbott* v. *Eastern Massachusetts Street R. Co.* (1927 C. A. 1st Mass.), 19 F. 2d 463; *Beauchamp* v. *United States* (1935, C. A. 9th Cal.), 76 F. 2d 633; *Russell* v. *United States* (1936, C. A. 8th Minn.), 86 F. 2d 389; *Graham* v. *United States* (1938 C. A. 9th Cal.), 99 F. 2d 746; *Western Fruit Growers, Inc.* v. *Gotfried* (1943, C. A. 9th Cal.), 136 F. 2d 98; *United States* v. *De Parcq* (1947, C. A. 7th Ill.), 164 F. 2d 124; *Pueblo Trading Co.* v. *El Camino Irrig. Dist.* (1948, C. A. 9th Cal.), 169 F. 2d 312, *cert. den.* 335 U. S. 911, 93 L. Ed. 444, 69 S. Ct. 482; *United States ex rel. White* v. *Walsh* (1949, C. A. 7th Ill.), 174 F. 2d 49; *Evans* v. *Pack* (1878, C. C. Mich.), 2 Flipp 267, F. Cas. No. 4566; *United*

States v. *Debs* (1894, C. C. Ill.), 64 F. 724; *Foot* v. *Buchanan* (1902, C. C. Miss.), 113 F. 156; *American Lighting Co.* v. *Public Service Corp.* (1904, C. C. N. Y.), 134 F. 129; *United States* v. *Atchison T. & S. F. Ry. Co.* (1905, C. C. Mo.), 142 F. 176; *Brotherhood of R. & S. S. Clerks* v. *Texas & N. O. R. Co.* (1928, D. C. Tex.), 24 F. 2d 426, *mod. on rel* 25 F. 2d 876, *aff'd* (C. A. 5th) 33 F. 2d 13 which is *eff'd* 218 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427. See *Re Swan* (1893), 150 U. S. 637, 37 L. Ed. 1207, 14 S. Ct. 225.

Due Process Entitled the Railroad's Counsel to a Trial Before an Impartial Judge.

The record discloses that the railroad's counsel, Owen W. Crumpacker, scrupulously avoided any statement which could or might have been construed as a direct contempt of court under either 18 U. S. C. § 401(1) ("misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice.") or the trial judge's inherent power to punish any offensive conduct which reflected upon the trial judge personally or degraded or demeaned the dignity of the court. This was acknowledged by Judge Eschbach, perhaps inadvertently, in his comments of January 16, 1975:

> "Really the only relevant comment directed to the purpose of this hearing today has been Mr. Crumpacker's statement, and I am sure he believes it sincerely and honestly, that he cannot comply with the order of this court because it is not correct." (App., p. A12.)

The record discloses that petitioner made a full, detailed, uncontradicted disclosure of the facts and circumstances demonstrating the perpetration of a vicious fraud on the court. In so doing, he was discharging his primary obligation to the court as an officer thereof. In addition to D. R. 7-102 of the Code of Professional Responsibility (App., p. A23), D. R. 7-103 of the code made it mandatory upon him to report to Judge Eschbach as he did. See also *Precision Instrument Manufacturing*

Co. v. *Automotive M. M. Co.*, 324 U. S. 806, 89 L. Ed. 1381, 65 S. Ct. 993 (1945).

As heretofore shown, petitioner made full and complete response, both orally and in writing, to each of the three rules to show cause issued by the trial judge (August 29, 1974, October 25, 1974, and November 29, 1974). In each of the extensive orders, and by the oral findings of September 12, 1974 finding him guilty of misconduct, including misrepresenting the existence of an investigation, the trial judge had conclusively determined all possible facts in issue against petitioner and had fully disclosed undeniable prejudices against him.

By what manner or means could it be said that petitioner would receive a fair and impartial trial on the vital issue as to "why Owen W. Crumpacker, defense counsel herein, should not be suspended from the practice of law in the United States District Court for the Northern District of Indiana." (App., p. A21)

Petitioner served and filed a motion suggesting that Hon. Jesse E. Eschbach disqualify himself pursuant to 28 U. S. C. 455. In his third paragraph of defense, filed on January 16, 1975, petitioner urged that the procedures determined upon by the order of November 29, 1974 requiring him to appear and show cause again on January 16, 1975 constituted a denial of his rights and liberties as guaranteed by Amendment V of the United States Constitution.

While we realize that the decision in *Mayberry* v. *Pennsylvania, supra,* involved a contempt proceedings in the state court, the reasoning is applicable to the case at bar. See also *U. S.* v. *Meyer* (1972), 462 F. 2d 827.

The unpublished order of the Court of Appeals under date of October 1, 1976 establishes a procedure repugnant to due process and in direct conflict with *Mayberry* v. *Pennsylvania* (1971), 400 U. S. 455, 91 S. Ct. 499, 27 L. Ed. 532.

Suspension from Practice in the United States District Court for the Northern District of Indiana Constitutes a Violation of Petitioner's Rights Under Amendment VIII of the Constitution.

Petitioner has resided in the Northern District of Indiana all of his life. He has practiced, actively, in the United States District Court for the Northern District of Indiana since he was admitted to the bar on January 4, 1939. This Court, since time in memorial, has held that the conviction of a lawyer of contempt of court (except in most unusual and aggravated cases) cannot and does not constitute grounds for suspension or disbarment. *Ex Parte Bradley,* 74 U. S. (7 Wall.) 364 (1868) and *Ex Parte Robinson,* 86 U. S. (19 Wall.) 505 (1873). Obviously, nearly every ground for disbarment is in itself a contempt of court. Nevertheless, suspension or disbarment from practice in the court is exercised only "whenever it is satisfactorily established that he (an attorney) is an unfit or unsafe person to enjoy the privileges of an attorney at law, or to manage the business of others in that capacity." *Cordery, Law Relating to Solicitors,* 183 (4 Ed. 1935). Congress, in adopting the Criminal Contempt Act expressly prohibited Federal Courts from imposing punishment other than "the fine of imprisonment, at its discretion" *18 U. S. C. § 401.* The trial judge, in the presence of the news media, singled out petitioner as the only lawyer ever found guilty of contempt of court in the 13 years that he had occupied the bench. (App. p. A11) Petitioner's conduct was described as such a "blatant, deliberate, willful challenge" to a court order which was of such a nature that the court could not "continue to discharge my oath and my responsibilities if I turn my back on a known willful disobedience to a court order" called to the attention of the court by counsel on the other side. (App. p. A12)

After four months of unremitting persecution, the trial judge, in an effort to justify his conduct in remaining in the case, con-

cluded that it was "only a civil contempt proceedings". Under this theory, he was wholly disinterested in any activity other than to assist one lawyer in his effort to collect a $120 debt from another lawyer. Yet, the trial judge was the agency which created the debt in the first place! Further, on the basis of the record the trial judge abused his non-existent contempt power to force a payment of an unconscionable fraudulent claim against the railroad.

CONCLUSION.

By reason of the foregoing, petitioner respectfully submits that the petition for a writ of certiorari should be granted and that the judgment of the United States Court of Appeals for the Seventh Circuit be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

October 1, 1976

(Argued December 2, 1975)

Before

HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. WILLIAM J. BAUER, *Circuit Judge*
HON. FRANCIS C. WHELAN, *District Judge**

JOSEPH MANCUSO and SAUL I. RUMAN,
Plaintiffs-Appellees,

No. 75-1313 *vs.*

INDIANA HARBOR BELT RAILROAD COMPANY and OWEN W. CRUMPACKER,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

Jesse E. Eschbach, Judge.

ORDER.

This is an appeal by Owen W. Crumpacker from the judgment and order entered by the District Court for the Northern District of Indiana on January 16, 1975. The appeal was noticed and filed on February 28, 1975. In fact, the order appealed from was formally filed by the District Court on January 17, 1975. Such written order was made pursuant to and in accordance with the conclusions announced orally from the bench on January 16, 1975.

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* United States District Judge Francis C. Whelan of the Central District of California is sitting by designation.

The order appealed from held Appellant Crumpacker, hereinafter Appellant, in civil contempt of court for his willful and deliberate failure and refusal to comply with the order of the District Court made in this action in the court below on September 12, 1974. The order appealed from also ordered that Appellant be and is hereby suspended from the practice of law in the United States District Court for the Northern District of Indiana until the date upon which he shall pay to the Clerk of the Court for the use and benefit of Plaintiff's counsel the sum of $240.00. Plaintiff's counsel is Saul I. Ruman. Such order further ordered that the Clerk of the Court is directed to refuse to permit Appellant or any agent or employee of Appellant to enter appearances or file any action or pleadings in the United States District Court for the Northern District of Indiana. The Clerk of the Court was further ordered by such order to notify all Deputy Clerks within the District to strike the name of Appellant from any action in which he has appeared and to provide notice to the parties for whom he has appeared that his appearance has been stricken by order of court. Pursuant to the request of Appellant, the District Court stayed execution and implementation of the order of suspension pending appeal of the decision by the United States Court of Appeals for the Seventh Circuit, provided that such appeal be taken as provided by law.

Thus, it appears that Indiana Harbor Belt Railroad Company as such has no interest in this appeal.

The only issues on this appeal are whether the order of the District Court of January 16, 1975, was valid and whether the district judge erred in not disqualifying himself from hearing the question as to whether Appellant was in contempt of the Court's order of September 12, 1974. The latter order ordered Appellant to pay to Saul I. Ruman the sum of $120.00 for the latter's services rendered Plaintiff Mancuso in securing the payment of the money settlement theretofore agreed upon between Plaintiff Mancuso and Defendant Indiana Harbor Belt Railroad Company.

It is true that in Appellant's opening brief he raised many alleged issues on appeal. However, no appeal was taken from any order other than the one of January 17, 1975, so he cannot attack the earlier orders referred to in his alleged issues on appeal.

It appears from the record in the court below that the jury trial of the action between Plaintiff Mancuso and Indiana Harbor Belt Railroad Company was in progress and that witnesses had been called and testified. Near the end of the second day of trial, on July 18, 1974, the trial judge was advised by counsel for Plaintiff and Defendant (Saul I. Ruman and Owen W. Crumpacker, respectively) that the action had been settled between Plaintiff Mancuso and Defendant Indiana Harbor Belt Railroad Company. Thereupon the jury was told of the settlement and discharged by the trial court.

Thereafter, Plaintiff Mancuso, through his counsel Saul I. Ruman, brought on for hearing before the District Court a motion for the completion of the settlement of the action as agreed upon. At the hearing on September 12, 1974, the court made its order ordering that for every day after September 20, 1974, that the amount of the agreed upon settlement had not been paid by the Defendant Railroad to Plaintiff Mancuso, the Defendant Railroad would be fined $1,000.00. In addition, and as a sanction, Appellant was ordered by the court to pay to Saul I. Ruman the sum of $120.00 for services rendered by him for Plaintiff in attempting to complete the settlement. The District Court found that such services were made necessary only because of the willful and unreasonable failure of Appellant to effectuate the settlement. The amount agreed upon by the parties on July 18, 1974, was paid by Defendant Railroad before any sanctions became payable by it. However, Appellant has at all times failed to pay the amount, or any part thereof, that he was ordered to pay to Saul I. Ruman.

After being advised by Ruman that Appellant had not paid the $120.00, or any part thereof, the trial court on October 25, 1974, made an order which stated that an order to show cause will

issue against Owen W. Crumpacker ordering him to show cause why further sanctions should not be imposed against him if he continues to fail to pay the amount ordered by the trial court to be paid to Ruman. Appellant filed a response to such order and among other things requested the court to cause the matter to be reassigned to another district judge. On November 26, 1974, the trial court issued an order to show cause to Owen W. Crumpacker requiring him to show cause why he should not be suspended from the practice of law in the United States District Court for the Northern District of Indiana until such time as he complied with the order requiring him to pay $120.00 to Saul I. Ruman. The trial court denied Appellant's request that the case be reassigned to some other judge and stated in so doing that the hearing on the order to show cause would be concerned only with the enforcement of the trial court's own order. The order to show cause was set for hearing on January 16, 1975, and Appellant was advised that if he had paid the $120.00 by January 2, 1975, the hearing would not take place.

We first consider Appellant's contention that the trial judge should have disqualified himself. Such contention is without merit for the reason that the order to show cause is concerned with a proceeding in re civil contempt and not with criminal contempt. Appellant errs in contending that proceeding was otherwise. The very words of the order to show cause make very clear that if Appellant complied with the order of September 12, 1974, there would be no further proceedings.

With respect to Appellant's contention that the trial court had no jurisdiction to entertain the matter resulting in the order of court of January 17, 1975, and that the order of January 17, 1975, was not a valid order, Appellant again errs. The proceeding was a proceeding to enforce the valid order for sanctions of September 12, 1974, issued by the trial court. The trial court had complete authority to impose sanctions upon Appellant as the attorney for the Defendant who had failed to comply with his obligation to effectuate the settlement agreed upon. The fact that

Appellant was not a party to the action but only the attorney for the Defendant did not destroy the power of the court to make an ancillary order for sanctions against him. The amount imposed as sanctions was indeed very reasonable.

The order of September 12, 1974, was not appealed from. The contempt proceeding herein did not reopen for consideration the legal or factual basis for the order of September 12, 1974. *Maggio* v. *Zeitz*, 333 U. S. 56, 69 (1947). The court had unquestioned jurisdiction to make its order of January 17, 1975, and it was a valid order. Appellant could have by mere compliance with the order of September 12, 1974, completely avoided any further sanctions. The sanctions imposed by the order of January 17, 1975, to wit, suspension from practice in the Northern District of Indiana until such time as Appellant paid a total of $240.00 to Ruman is a reasonable sanction. The court in the latter order ordered Appellant to pay an additional amount of $120.00 to Ruman to compensate Ruman for his legal services rendered in connection with the hearing on January 16, 1975. This additional amount imposed as sanctions by the court is likewise merited and very reasonable in its nature. A fine imposed for civil contempt which compensates the party injured by the refusal of the opposing party to obey a lawful court order is proper. Compensation may take the form of attorney's fees. *Nostrom* v. *Wahl*, 41 F. 2d 910 (7th Cir. 1930). The orders of the court concerning Appellant should therefore be affirmed.

During oral argument Attorney Ruman suggested that it would be appropriate for this court to award him another $500.00 because of additional work in connection with the appeal. We decline to take any action on this request. Costs of appeal, of course, will be awarded to the appellee.

AFFIRMED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

November 1, 1976

Before
HON. WILBUR F. PELL, JR., *Circuit Judge*
HON. WILLIAM J. BAUER, *Circuit Judge*
HON. FRANCIS C. WHELAN, *District Judge**

JOSEPH MANCUSO and SAUL I. RUMAN,
Plaintiffs-Appellees,

No. 75-1313 *vs.*

INDIANA HARBOR BELT RAILROAD COMPANY and OWEN W. CRUMPACKER,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

Jesse E. Eschbach, Judge

On consideration of the petition for rehearing in the above-the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be and the same is hereby DENIED.

* United States District Judge Francis C. Whelan of the Central District of California is sitting by designation.

SUPREME COURT OF THE UNITED STATES

No. A-582

OWEN CRUMPACKER,
Petitioner.

vs.

SAUL I. RUMAN, ET AL.

ORDER FURTHER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and including February 22, 1977.

/s/ JOHN PAUL STEVENS
Associate Justice of the Supreme Court of the United States.

Dated this 3rd day of February, 1977.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Indiana
Hammond Division

JOSEPH MANCUSO,
Plaintiff,

vs.

INDIANA HARBOR BELT RAILROAD COMPANY,
Defendant.

Civil No. 72 H 63(2)

ORDER

Pursuant to prior order of this court entered November 26, 1974, a hearing was held in open court at 12 noon on January 16, 1975. Plaintiff was present by counsel, Saul I. Ruman, Esq., and defense counsel Owen W. Crumpacker, Esq., was personally present.

To avoid the necessity of repeating the reasons and purposes for the hearing, this court now incorporates herein by reference the prior orders of August 29, 1974, September 12, 1974, October 25, 1974, and November 26, 1974. Transcripts of the hearings held in regard to this matter are also incorporated herein by reference, said hearings having been held on September 12, 1974 and January 16, 1975.

At the conclusion of the hearing on September 12, 1974, this court imposed a sanction on defense counsel Owen W. Crumpacker in the amount of one hundred twenty dollars ($120) which was to be paid to plaintiff's counsel. This was in reimbursement for three hours of time which plaintiff's counsel had been required to expend needlessly and without reason by virtue of the conduct of the said Owen W. Crumpacker which was directly contradictory to representations made by the said

Owen W. Crumpacker and plaintiff's counsel to this court during the trial of this cause. No appeal was ever taken from this court's order of September 12, 1974 imposing the sanction. However, defense counsel wilfully and deliberately failed and refused to comply with this court's order of September 12, 1974, and as a result thereof and following a full hearing on January 16, 1975, this court found defense counsel guilty of a civil contempt. This court further, on January 16, 1975, imposed an additional one hundred twenty dollars ($120) sanction against the said Owen W. Crumpacker by reason of three additional hours of time which plaintiff's counsel had been required to expend needlessly and without reason by virtue of the failure of Owen W. Crumpacker, Esq., to comply with this court's order of September 12, 1974. The findings and conclusions in support of the conclusion that defense counsel was in civil contempt of this court are contained in the remarks made from the bench by the undersigned judge of this court on January 16, 1975. As a result of the sanction imposed on September 12, 1974 and the additional separate sanction imposed on January 16, 1975, defense counsel Owen W. Crumpacker is obligated, pursuant to the orders of this court, to pay to the clerk of this court for the use and benefit of plaintiff's counsel the total sum of two hundred forty dollars ($240).

As previously noted, this court, on January 16, 1975, announced from the bench that Owen W. Crumpacker was in civil contempt of this court for his wilful and deliberate failure and refusal to comply with the order of this court, which order had never been appealed. This court concluded that by way of a remedial sanction to enforce compliance with this court's order, Owen W. Crumpacker should be suspended from the practice of law in the United States District Court for the Northern District of Indiana until he complies with the order of this court. This sanction is in no way intended as punishment since no criminal contempt is here involved, but is intended only to enforce compliance with an order of this court.

Accordingly and pursuant to the conclusions announced from the bench on January 16, 1975, this court finds Owen W. Crumpacker in civil contempt of this court for his "wilful and deliberate failure and refusal to comply with an order" of this court; and it is further the order of this court that Owen W. Crumpacker be and "he is hereby suspended from the practice of law in the United States District Court for the Northern District of Indiana until the date upon which he shall pay to the clerk of this court for the use and benefit of plaintiff's counsel the sum of two hunderd forty dollars ($240). The clerk of this court is directed to refuse to permit Owen W. Crumpacker or any employee or agent of Owen W. Crumpacker to enter appearance or file any action or pleading in the United States District Court for the Northern District of Indiana. And the clerk of this court is further ordered and directed to notify the deputy clerks in each of the divisional or area offices of this court to strike the name of Owen W. Crumpacker from any action in which he has appeared and to provide notice to the parties for whom he has appeared that his appearance has been stricken by order of court and that the parties for whom he has appeared have twenty (20) days in which to obtain new counsel. Provided, however, that upon the request of Owen W. Crumpacker, Esq., made in open court on January 16, 1975, execution and implementation of this order of suspension is stayed pending appeal to and decision by the United States Court of Appeals for the Seventh Circuit. Provided further that in the event no appeal is taken as provided by law, then and in that event upon the expiration of the time provided for appeal and if there has been no compliance with the orders of this court, this order shall be executed and implemented immediately. Otherwise, execution and implementation of such order shall await the decision and mandate of the United States Court of Appeals for the Seventh Circuit.

Entered this 17th day of January, 1975.

/s/ JESSE E. ESCHBACH
United States District Judge

EXCERPTS OF JUDGE ESCHBACH'S REMARKS ON JANUARY 16, 1975.

Now if we get to the area where an lawyer contends he has the right to tell a client to wilfully disobey an order of the Court, until that order is vacated or reversed, then Counsel does not have that power.

Now mention has been made of the disciplinary commission matter and that I referred to it at some one or more times during this proceeding, and I think essentially that is correct, but let me point out, Gentlemen, that I think a pleading or something was filed, perhaps it was a brief, it is my best recollection that it was a pleading or a response filed by Mr. Ruman, he pointed out that part of the problems in obtaining discovery and so on with Mr. Crumpacker's client was that there was this disciplinary matter pending. It was obvious that in the problems the attorneys were having in endeavoring to make appropriate discovery that the personal animosity between counsel unfortunately was interfering with the discovery process anticipated by the Federal Rules of Civil Procedure. In an effort to put that outside of this case so we could address ourselves to the merits of this case, I pointed out that this disciplinary proceeding, this ill-feeling between counsel must be eliminated from the consideration of this case, and that Counsel must proceed in cooperation with the Court in good faith, and to comply with the Federal Rules of Civil Procedure and the discovery procedures therein contained, and I think that as the trial judge that was my responsibility.

Gentlemen, as I have said, I have been a Federal Judge for almost 13 years. In 13 years I not only have never found a lawyer in contempt of court, I have never even threatened to find a lawyer in contempt of Court, and I had hoped I never would. Unfortunately, this blatant, deliberate, wilful challenge to what I believe to be a valid order to pay $120 in attorney fees cannot go unnoticed. I would much prefer to spend this time in ruling

on motions, on trying cases than to be in here on this kind of a matter, but how can I continue to discharge my oath and my responsibilities if I turn my back on a known wilful disobedience to a court order, called to the attention of the Court by Counsel on the other side after at least two complete full blown hearings having been held, and every opportunity that I could dream of has been presented to each side to present anything he wishes before me. I don't know what I sincerely could do. (Our emphasis.)

Mr. Crumpacker has made reference to the integrity of the tribunal and the judicial process, and has implied that in some way I abuse that because I am proceeding to enforce my own order. If this was a separate criminal contempt matter, Mr. Crumpacker, even though I honestly believe there is no question regarding my impartiality, I would never the less promptly disqualify myself upon your mere suggestion, but because this is an order which I have entered in a case over which I have proper jurisdiction, which order was not appealed, I believe I have to retain the jurisdiction to enforce my own order; and, Gentlemen, I will do so.

It is more than six months, I believe, since the trial. Mr. Crumpacker has made and brought assertions and I listened to them in open Court concerning perjury and fraud in the evidence presented at trial by the Plaintiff, yet to this date other than the broad assertions nothing has ever been presented of a substantive evidentiary nature to support those allegations. It was not my disinterest in fraud that I proceeded to determine that your representations were a sham, it was because there was nothing to back them up, nothing that I could find that was presented to me to support them. Really the only relevant comment directed to the purpose of this hearing today has been Mr. Crumpacker's statement, and I am sure he believes it sincerely and honestly, that he cannot comply with the order of this Court because it is not correct.

You Gentlemen know, as any lawyer or judge knows, we are all human. I have erred as a trial Judge, never intentionally but I have erred. I have been reversed as a trial judge, and properly so. That is why we have Courts of Appeal, but in this case I feel strongly, I feel firmly that I have been fair and I have discharged my responsibilities honorably. I am sick that it is necessary to hold this hearing. In my order I gave Mr. Crumpacker the opportunity to pay the $120 to the Clerk of the Court at any time on or before January 22 and I wouldn't even hear this matter. **Quite frankly, Gentlemen, I almost prayed that Mr. Crumpacker would pay the $120 but he chose not to do so and to continue his wilful defiance of the order of this Court.**

Now I don't want further argument, Gentlemen. I gave you both unlimited opportunity. I want to ask you, Mr. Crumpacker, and all I want is an answer of "yes" or "no," sir, will you pay the $120? (Our emphasis.)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Indiana
Hammond Division

JOSEPH MANCUSO,
Plaintiff,
vs.
INDIANA HARBOR BELT RAILROAD COMPANY,
Defendant.
} Civil No. 72 H 63(2)

MOTION TO COMPEL COMPLETION OF SETTLEMENT

Comes now the plaintiff, by counsel, and shows the Court as follows:

1. That while this trial was in process, the Court was informed of a settlement between the parties in the sum of Thirty Five Thousand ($35,000.00) Dollars on the 18th day of July, 1974, over one month ago.

2. Based upon said settlement the plaintiff agreed to withdrawal of submission of the case and the Court discharged the jury.

3. That following the said settlement the plaintiff has continuously tried to complete the settlement, and, has contacted the Indiana Harbor Belt on numerous occassions and attempted to contact the Indiana Harbor Belt's attorney, Owen Crumpacker, who has not returned the telephone calls.

4. That the Indiana Harbor Belt has just informed me that they cannot complete the settlement without my contacting Owen W. Crumpacker.

5. I have made three calls to Mr. Crumpacker's office, while he was in the office. My secretary was told by his secretary that he would return the calls, which has not been done.

6. That plaintiff cannot complete the settlement without action by the Court to assist the process of settlement.

7. That as a result of the defendants delay in settlement, plaintiffs attorney has put in additional time.

WHEREFORE, plaintiff prays that this Court set a hearing at which time defendant would be ordered to produce the check in full settlement of the case and that the defendant prepare a release (plaintiff has already submitted dismissals which may be filed upon completion of the settlement), and, that defendant be ordered to pay attorney fees and additional costs made necessary by the failure of said defendant to complete the settlement and for all other proper relief.

/s/ SAUL I. RUMAN
Saul I. Ruman
5261 Hohman Avenue
Hammond, Indiana 46320
933-7600 (219)
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 27th day of August 1974, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

By: /s/ SAUL I. RUMAN
Saul I. Ruman
Attorney at law

jf
71-196-B/H
8-27-74

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Indiana
Fort Wayne Division

JOSEPH MANCUSO,
Plaintiff,
vs.
INDIANA HARBOR BELT RAILROAD COMPANY,
Defendant.
Civil No. 72 H 63(2)

ORDER

On August 28, 1974, counsel for the plaintiff herein filed a motion with this court seeking an order of this court compelling the defendant to complete a settlement arrangement of this matter which the attorneys of record for both sides represented to this court had been agreed upon during trial of this action. It is unfortunate indeed if the allegations in the motion are true and defense counsel, through his conduct, prevents the completion of a settlement which he himself represented to this court during trial had been made. This matter is of such serious proportions that this court deems a prompt hearing to be essential, not only to require completion of the settlement but to determine the nature of the midconduct, if any, of counsel and the appropriate penalties therefor. During the meeting in chambers when the attorneys for both sides represented to this court that the settlement had been made and the jury could be discharged, there was also personally present a claim agent for the defendant railroad who made like representations to this court. Counsel for the defendant is ordered and directed to have said claim agent personally present for the hearing at the date, time, and place hereinafter established.

Accordingly, this court will conduct a hearing at 12 noon on Thursday, September 12, 1974 in the second floor courtroom in the Federal Building in Hammond, Indiana.

/s/ JESSE E. ESCHBACH
United States District Judge

EXCERPTS OF JUDGE ESCHBACH'S DECISION OF SEPTEMBER 12, 1974

The Court: Gentlemen, this Court finds:

That it has been almost sixty days since the attorneys here assembled represented to the Judge of this Court, both in open court and in my chambers, that this matter had been settled;

That Counsel for the Defendant has deliberately held up that settlement without coming to this Court with any report, or any motion to withhold settlement, or to indicate that an investigation was under way. As a matter of fact, I am inclined to believe that no such investigation was under way, and that it is a sham put upon this Court by Defense Counsel, Owen W. Crumpacker, to warrant the delay of this settlement.

I direct that by or before September 20, 1974, Mr. Crumpacker pay to Mr. Saul I. Ruman the sum of one hundred twenty dollars for three hours of time needlessly consumed in pursuing a settlement which both attorneys had represented to this court had been made.

I also direct Mr. Patno to advise his employer, the Indiana Harbor Belt Railroad, that if this settlement is not concluded by or before September 19, 1974, I will assess, commencing September 20, 1974, a penalty of one thousand dollars per day for each and every day thereafter that settlement is delayed.

If there are any matters of a criminal investigation involved in regard to either side, take that to the proper law enforcement officers, be it the FBI or the United States Attorney. (Our emphasis.)

Gentlemen, that is the Order of this Court and, believe me, I will pursue it.

Court is in recess.

(Court recessed at 11:58 a.m.)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Indiana
Hammond Division

JOSEPH MANCUSO,
Plaintiff,

vs.

INDIANA HARBOR BELT
RAILROAD COMPANY,
Defendant.

Civil No. 72 H 63(2)

ORDER

On August 28, 1974, counsel for the plaintiff herein filed a motion with this court seeking an order of this court compelling the defendant to complete a settlement of this cause. On July 18, 1974, during a jury trial of this cause and near the end of the second day thereof, Saul I. Ruman, counsel for the plaintiff, and Owen W. Crumpacker, counsel for the defendant, along with a claim agent for the defendant, came to the chambers of the undersigned judge of this court and reported that this cause has been settled for $35,000. Counsel represented that the settlement was absolute, that there were no conditions, and that the settlement would be complete upon the exchange of a check and release or dismissal. In response to the motion of August 28, 1974, this court conducted a hearing in Hammond, Indiana, on September 12, 1974, at which time this court heard evidence and the argument of counsel on both sides. At the conclusion of that hearing, this court directed the defendant to complete the settlement as represented and that upon its failure to do so by a date certain, this court would impose a sanction on the defendant. This direction was given orally from the bench at the conclusion of the hearing and in

the presence of counsel for both sides and the claim agent for the defendant. The defendant railroad fully complied with that order of this court, and the settlement was concluded. However, in the motion of August 28 and at the hearing on September 12, plaintiff's counsel sought a sanction against defense counsel. Plaintiff's counsel sought payment of the additional time and expense incurred by plaintiff's counsel by reason of the conduct of defense counsel in blocking the settlement which he had represented to this court had been effected. At the hearing on September 12, plaintiff's counsel represented that he had spent approximately three additional hours of time in the preparation of the motions and the attendance at the hearing. Plaintiff's counsel further represented his usual time rate, and this court then directed that defendant's counsel pay to plaintiff's counsel the amount of one hundred twenty dollars ($120) as a sanction for his wilful and unreasonable failure to conclude the settlement which he had represented to this court had been made. The amount of that sanction was determined by applying the three hours additional time required of plaintiff's counsel to a time rate of forty dollars ($40) per hour. Such sanction was to be paid to plaintiff's counsel by September 20, 1974.

On October 17, 1974, counsel for the plaintiff filed a report and showing with this court alleging that the sanction of $120 as additional attorneys fees had not been paid by defense counsel, Owen W. Crumpacker. Plaintiff's counsel further alleged that such failure was "intentional with malice." Plaintiff's counsel sought an order to show cause, enforcement of sanctions by removing Owen W. Crumpacker from "practice in the United States District Court," and punitive damages in the amount of ten thousand dollars ($10,000). On October 25, 1974, this court entered an order directing defense counsel Owen W. Crumpacker to show cause why sanctions should not be imposed for his alleged failure to comply with the prior orders and sanctions of this court. Such showing was to be made in the office of the clerk of this court on or before Novem-

ber 19, 1974. On November 19, 1974, defense counsel Owen W. Crumpacker filed a response to the order to show cause. **In such response, defense counsel alleged that the sanction was void and of no effect and that the sanction had been imposed without invoking the jurisdiction of this federal court.** Counsel Owen W. Crumpacker further alleged that plaintiff's counsel had not in fact been compelled to incur additional time and expense in obtaining the fulfillment of the settlement agreement. Defense counsel again brought before this court all of his argument made in open court on September 12, 1974. **Defense counsel sought an order of this court denying all of the relief sought in the Report filed October 17, 1974 by plaintiff's counsel. Defense counsel also sought an order by the undersigned judge of this court referring this matter "to a judge outside of the district."**

In regard to the request for reference to a different judge, it must be noted that this cause has since its inception been assigned to the undersigned judge of this court and that all the post-trial proceedings, including the hearing on September 12, 1974, were before the undersigned and that the sanctions imposed were sanctions imposed by the undersigned judge of this court. Accordingly, it is the duty of the undersigned judge of this court to continue in this matter pursuant to the pleadings filed by plaintiff's counsel and to take such action and make such determinations as are required by the law and the facts and by counsel's conduct herein. The reincorporation of counsel's argument of September 12 adds nothing to be considered at this late date in this matter. Had counsel or his clients wished to appeal the order of September 12, 1974 directing the completion of the settlement previously represented to this court or the imposition of the $120 sanction, counsel had his rights of appeal but elected to pursue them.

Accordingly, this court will conduct a hearing at 12 noon in the United States District Court Room on the second floor of the Federal Building in Hammond, Indiana, on January 16, 1975, as to why Owen W. Crumpacker, defense counsel herein,

should not be suspended from the practice of law in the United States District Court for the Northern District of Indiana until such time as the $120 sanction previously assessed against counsel is paid. Provided, however, that if such sanction of one hundred twenty dollars ($120) is paid into the office of the clerk of this court in Hammond, Indiana, by said Owen W. Crumpacker on or before January 2, 1975, then and in that event such payment shall constitute complete response to this order, and the hearing hereinbefore set shall not be held.

Entered this 26th day of November, 1974.

/s/ JESSE E. ESCHBACH
United States District Judge

CONSTITUTION

AMENDMENT V— CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, "nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT VIII—EXCESSIVE BAIL, FINES PUNISHMENTS

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

RULES OF THE SUPREME COURT OF INDIANA

ADMISSION AND DISCIPLINE RULE 23

DR 7-102 Representing a Client Within the Bounds of the Law.

(B) A lawyer who receives information clearly establishing that:

* * * * *

. . . (2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

TITLE 18 U. S. C. CHAPTER 21—CONTEMPTS

§ 401. Power of Court.

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. June 25, 1948, c. 645, 62 Stat. 701.

§ 402. Contempts Constituting Crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done by of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law. June 25, 1948, c. 645, 62 Stat. 701; May 24, 1949, c. 139, § 8(c), 63 Stat. 90.

FEDERAL RULES OF CRIMINAL PROCEDURE (TITLE 18)

Rule 42. Criminal Contempt

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.